

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>CARLOS ZUNIGA HERNANDEZ,</b>	:	<b>CIVIL ACTION NO. 1:12-CV-00647</b>
	:	
<b>Plaintiff,</b>	:	<b>(Chief Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>UNITED STATES OF AMERICA,</b>	:	
	:	
<b>Defendants.</b>	:	

**ORDER**

AND NOW, this 2nd day of October, 2013, upon consideration of the report and recommendation of United States Chief Magistrate Judge Martin C. Carlson (Doc. 40), recommending that the court grant the United States' motion for summary judgment (Doc. 23) in its entirety, and, after an independent review of the record, and noting that defendant filed an objection<sup>1</sup> (Doc. 50) to the report on September 30, 2013, and the court finding Judge Carlson's analysis to be thorough, well-reasoned, and amply supported by

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<sup>1</sup> Where objections to a magistrate judge's report and recommendation are filed, the court must perform a *de novo* review of the contested portions of the report. Supinski v. United Parcel Serv., Civ. A. No. 06-0793, 2009 WL 113796, at \*3 (M.D. Pa. Jan. 16, 2009) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n. 3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(c)). "In this regard, Local Rule of Court 72.3 requires 'written objections which . . . specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for those objections.'" Id. (citing Shields v. Astrue, Civ. A. No. 07-417, 2008 WL 4186951, at \*6 (M.D. Pa. Sept. 8, 2008)).

the record, and the court further finding defendant's objections to be without merit<sup>2</sup> and squarely addressed by Judge Carlson's report, it is hereby ORDERED that:

1. The report of Chief Magistrate Judge Carlson (Doc. 40) recommending the grant of the United States' motion for summary judgment is ADOPTED in its entirety.
2. The United States' motion for summary judgment (Doc. 23) is GRANTED in its entirety.
3. The Clerk of Court is directed to enter JUDGMENT in favor of the United States and against plaintiff on all claims.
4. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER  
CHRISTOPHER C. CONNER  
Chief Judge, Middle District of Pennsylvania

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<sup>2</sup> Plaintiff, proceeding *pro se*, objects to Judge Carlson's R&R for failing to "give Plaintiff, as the non-moving party, the benefit of all reasonable inferences." (Doc. 50 at 2-3). Despite being on clear notice of his obligation to do so, plaintiff failed to put any evidence before the magistrate judge from which a favorable inference might be drawn. Indeed, plaintiff submitted *no evidence whatsoever* in support of his claim, and further failed to contest the defendant's statement of facts as required by the Local Rules. In recommending that the court grant summary judgment to the defendant, Judge Carlson summarized the factual allegations in plaintiff's complaint and contrasted them with the record evidence submitted by the defendant, ultimately concluding that the discretionary function exception to the Federal Tort Claims Act bars plaintiff's claims. (Doc. 40 at p.1 & n.1, pp. 21-25). Under the circumstances, because plaintiff has failed to present any evidence in support of his claim, the magistrate judge's construction of the record was entirely appropriate. Plaintiff's objection is overruled.